

REMARKS

The Applicants respectfully request reconsideration in view of the following remarks and amendments. Claims 1, 3, 7, 8, 10, 11, 12, 13, and 17 have been amended. Claims 4 and 9 are cancelled herein. Claims 21 and 22 have been previously cancelled. No claims have been added. Accordingly, claims 1-3, 5-8 and 10-20 are pending in the Application.

I. Objections to the Drawings

The Drawings stand objected to under 37 CFR 1.83(a) for failing to show every feature of the claims. Specifically, the Examiner alleges that the elements of claim 9 are not shown in the Drawings. See Final Office Action, Page 2. In response, claim 9 has been cancelled. Accordingly, the objection to the Drawings on this basis is now moot.

II. Specification

The Specification is objected to for failing to include sections headings and for improperly using a trademark. In response, the Specification has been amended to include all appropriate headings and to properly use the trademark VELCRO. Additionally, the Specification has been amended to properly describe that VELCRO elements are hook and loop structures without adding new subject matter to the Application. These amendments are submitted in the form of an Amended Specification. Both marked-up and clean copies of the Specification are provided. The Applicant respectfully requests reconsideration and withdrawal of the objection to the Specification on this basis.

III. Claim Rejections – 35 U.S.C. § 112

Claims 4 and 7-13 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention.

With respect to claim 4, the Examiner argues that elements of this claim are indefinite. In response, this claim has been cancelled. Accordingly, the rejection of this claim is now moot.

With respect to claims 7 and 11, the Examiner argues that these claims are indefinite for using the trademark VELCRO. In response, the trademark VELCRO has been replaced with

“hook and loop” as this is the generic term for the products marketed under the VELCRO trademark.

With respect to claims 7, 8, 11, and 12, the Examiner argues that use of the term “type” renders the claims indefinite. In response, this term has been removed from these claims.

With respect to claims 10-13, the Examiner argues that “the closure element” lacks proper antecedent basis. In response, these claims have been amended to provide proper antecedent basis for this term.

With respect to claim 13, the Examiner argues that recitation that the closure element is operated by a slide is indefinite, because it is not supported by recitation in the claim of sufficient structure to accomplish this function. In response, claim 13 has been amended to recite that the closure element comprises a slide. The Applicant submits that since the closure element comprises a slide instead of being operated by a slide, claim 13 is now definite.

With respect to claim 17, the Examiner argues that this claim lacks antecedent basis for “each gusset.” In response, this claim has been amended to replace “each gusset” with “the gusset.”

Based on the amendments and remarks provided above, the Applicants submit that the claims are definite in compliance with 35 U.S.C. § 112, second paragraph. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection of the claims on this basis.

IV. Claim Rejections – 35 U.S.C. § 102 and § 103

Claims 1-4, 6, 10 and 14-20 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,953,708 by Beer et al. (“Beer”).

Claims 1, 3-6 and 10-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,332,344 by Strodthoff (“Strodthoff”) in view of Beer.

To determine obviousness of a claim: (1) factual findings must be made under the factors set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966); and (2) the analysis supporting the rejection under 35 U.S.C. § 103 should be made explicit and there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. See MPEP §§ 2141(II), 2141(III), and 2142; KSR International Co. v. Teleflex

Inc., 82 USPQ2d 1385, 1396; see e.g., MPEP § 2143 (providing a number of rationales which are consistent with the proper “functional approach” to the determination of obviousness as laid down in Graham).

With respect to claim 1, this claim has been amended to recite:

“A packaging bag that includes at least one flap formed at one end of a bag body, said flap being folded back along a fold line against a face of the bag body and held in this position by a detachable connecting element, wherein said packaging bag also includes an element designed to provide for a re-closeable opening which extends perpendicularly to the fold line and covers the full width of the flap and at least a substantial width of a bag body section which lies under the fold line” (emphasis added).

These amendments are supported, for example, by Figure 1-5 and page 5, lines 6-10 of the Application as filed. Further, the Applicants submit that the cited prior art fails to disclose each element of amended claim 1.

In particular, the opening of Beer is only re-closable along the line labeled 50 (see Beer, column 4, lines 1-5) since the seal line section 48 is a permanent seal (see id., column 3, lines 65-69). Further, the opening of Beer extends *parallel* to the fold line of the flap. See id. Accordingly, due to the opening’s position it cannot cover the bag body section that underlies the fold line of the flap, because the opening is not situated in the proper direction (*i.e.* perpendicular to the fold line). In contrast, the packaging bag of amended claim 1 includes “an element designed to provide for a re-closeable opening which extends *perpendicularly* to the fold line and *covers the full width of the flap and at least a substantial width of a bag body section which lies under the fold line*” (emphasis added). By failing to disclose these elements of claim 1, Beer fails to disclose each element of claim 1.

Moreover, Strodthoff fails to cure the deficiencies of Beer, because Strodthoff does not describe or otherwise disclose a flap. Thus, Strodthoff also cannot disclose the opening of amended claim 1, which includes a flap.

For at least the reasons, provided above, the combination of Beer and Strodthoff fails to disclose each element of amended claim 1 and cannot maintain a rejection under 35 U.S.C. § 102 or § 103.

Additionally, the Applicants also submit that a person of ordinary skill in the art would not modify Beer and Strodthoff as suggested by the Examiner, because these references are not analogous art for the purpose of analyzing claim 1. Specifically, neither of these references is

related to packaging bags adapted to receive contents that are packed under high pressure as is the packaging bag of claim 1 is designed to accommodate. Instead, Beer and Strodt Hoff are directed to a device wherein contents are poured through a spout. Thus, the technical domains of the references are very dissimilar from that of claim 1, which recites a bag structure used that is adapted to receive contents that are packed under high pressure. As a result, a person of ordinary skill in the art would not have been motivated to modify Beer and/or Strodt Hoff as suggested by the Examiner to arrive at the packaging bag of claim 1, because these references deal with fields of art and technical problems unrelated to the packaging bag of claim 1. For example, in Beer and Strodt Hoff, a person of ordinary skill in the art would not add a flap in order to enable the expansion of the contents of the bags as recited in claim 1, since the contents of the bags recited therein are not intended to be compressed.

Furthermore, neither of these references disclose or otherwise describe the specific location and direction of a re-closable opening. Accordingly, a person of ordinary skill in the art would not be motivated to modify an opening disclosed therein such that the re-closable opening is moved to a lateral wall of the bag so that it extends perpendicularly to the fold line of the flap, over the flap and a part of the lower bag body section as recited in claim 1. Therefore, this modification of the cited references must have been made by impermissible hindsight reasoning.

For at least the reasons provided above, a person of ordinary skill in the art would not modify Beer and Strodt Hoff as suggested by the Examiner, because these references are not analogous art for the purpose of analyzing claim 1. Additionally, as also described above, even if the references were considered analogous, the combination does not disclose each element of amended claim 1. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1 on this basis.

With respect to claims 2, 3, 5-8 and 10-20, these claims depend from claim 1 and incorporate the limitations thereof. The Examiner's argument assumes that the combination of Beer and Strodt Hoff discloses all elements of claim 1 which are incorporated in dependent claims 2, 3, 5-8 and 10-20. However, as discussed above, the combination of Beer and Strodt Hoff does not disclose all the limitations of amended claim 1. Therefore, claims 2, 3, 5-8 and 10-20 are not obvious in view of the cited prior art. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection of claims 2, 3, 5-8 and 10-20 on this basis.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

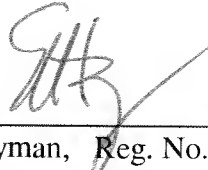
PETITION FOR EXTENSION OF TIME

Per 37 C.F.R. 1.136(a) and in connection with the Final Office Action mailed on April 29, 2010, Applicant respectfully petitions Commissioner for a two (2) month extension of time, extending the period for response to September 29, 2010. The amount of \$490.00 to cover the petition filing fee for a 37 C.F.R. 1.17(a)(2) large entity will be charged to our Deposit Account No. 02-2666.

Respectfully submitted,

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web to the United States Patent and Trademark Office on the date noted below.


Jessica M. Huester

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Date